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No. 88-604 (4)

In The

Supreme Court of the United States

October Term, 1988

VICKI FROST,

Petitioner,

v.

HAWKINS COUNTY BOARD OF EDUCATION, JEAN PRICE, JOE ASHBROOK, BILL B. SNODGRASS, CITY OF CHURCH HILL, TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE RESPONDENT CITY OF CHURCH HILL, TENNESSEE IN OPPOSITION

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THE WRIT OF CERTIORARI SHOULD BE DENIED FOR THE FOLLOWING REASONS:

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II. All theories of liability pertinent to Church Hill, Tennessee were tested and determined in its favor in accord with established principles of law 3

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Respondent City of Church Hill presents this brief in support of its request that this Court deny the Petition for Writ of Certiorari, seeking review of the opinion of the United States Court of Appeals for the Sixth Circuit, as reported in 851 F.2d 822.

STATEMENT OF THE CASE

Because the Petition for a Writ of Certiorari does not delineate the status of Church Hill, Tennessee, other than designating it as a respondent, a capsule statement of facts and the action of the trial court follows:

Church Hill is a municipal corporation in and of the State of Tennessee. The elementary school in which the incidents subject of this suit occurred is located within the municipal boundaries, but the school itself is operated by the Hawkins County Board of Education.

The four-man police force of Church Hill does give law enforcement support to the school. In fact, the only specific direction the City of Church Hill gave its officers pertaining to the school, according to Mayor Housewright, was that available officers be present at the school zones at the beginning and the end of the (school) day (TR Vol. VII, p. 98, l. 19).[1]

The trial and its record is devoid of any evidence that the municipality itself was ever a protagonist or a participant in any action or activity alleged to have violated the rights of Vicki Frost.

At the close of all the proof the District Judge, upon motion, directed a verdict in favor of the City of Church Hill as there was no reason to submit the question of its liability to the jury.

One of the theories of the Plaintiff in the Trial Court was that the action of Joe Ashbrook, the Chief of Police

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[1] The TR reference(s) is to the page and line of the trial transcript.

was acting based upon a policy, practice, custom or procedure established by the municipality. Alternatively, the allegation was that Ashbrook's action was that of a "policy maker" and that with his arrest of Mrs. Frost, his action in an official capacity became the act of the City of Church Hill. *Brandon v. Holt,* 469 U.S. 796 (1985).

The precautionary argument in this brief will then be limited to the particular points met in the trial and how they were dealt with in the Court of Appeals. As a reading will reflect, the issues presented in the Petition are not directed to this respondent nor were they really the subjects addressed in the original lawsuit.

ARGUMENT

The trial court in granting the motion for a directed verdict as to the respondent City of Church Hill was charged with the responsibility to "determine whether there was sufficient evidence presented to raise a material issue of fact for the jury." *O'Neill v. Kiledjian,* 511 F.2d 511, 513 (6th Cir. 1975). Also see *Rockwell International Corp. v. Regional Emergency Medical Services,* 668 F.2d 29 (6th Cir. 1982). In turn, the Court of Appeals reviews the granting of the directed verdict under the same standard used by the trial judge in determining whether or not it was appropriate to grant the motion. *Sawchik v. E. I. Dupont Denemours & Co.,* 783 F.2d 635 (6th Cir. 1986).

Thus, there were two considered decisions that the evidence simply would not support any claim against the City of Church Hill.

The Court of Appeals presented its opinion with full recognition of the decisions of the United States Supreme Court.

First, there was the decision of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), concerning a "custom" or "policy" of a city. The Court of Appeals said:

> "In the instant case, we find no evidence of an offensive custom." (11a).[2]

Next, the Court of Appeals looked at the question of "official policy" and used both the cases of *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) and the recent case of *City of St. Louis v. Praprotnik*, 108 S.Ct. 915 (1988) as guidelines. This was the Court's finding:

> "The record establishes that in the City of Church Hill only the Mayor and the Board of Aldermen could determine Police Department policy. In fact, an examination of the trial testimony of the Mayor and the City Clerk, as well as the City's official minutes, makes it very [851 F.2d 829] difficult to see how the City participated in the incident that precipitated this lawsuit." (13a).

With no intent to minimize the Petition for Certiorari as it might appear to this respondent, it simply does not raise any issues germane, either to the trial or the appeal of matter with which City of Church Hill was concerned.

It is respectfully suggested that the reading of the Petition itself supports the contention that this municipality is included in name only and it has been fully

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[2] The reference(s) to a page followed by an a is to the Appendix in the Petition for Certiorari.

absolved in the Courts below. There were no issues dealt with by both the Trial and Appellate Courts that were not based upon established precedent once the facts were determined; the exercise of this Court's jurisdiction is not required.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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